

## **TRIAL EXHIBIT 59**

Exhibit 59 Page 3



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**California Department of  
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GAVIN NEWSOM  
Governor

September 13, 2022

**TO:** All Californians  
**SUBJECT:** Health Care Worker Protections in High-Risk Settings



**Note: This guidance is no longer in effect and is for historical purposes only.**

**Related Materials:** Health Care Worker Protections in High-Risk Settings Q&A

**State Public Health Officer Order of September 13, 2022**

Since the start of the pandemic, the California Department of Public Health (CDPH) has led with science and data to better understand this disease. California has seen a dramatic increase in the percentage of Californians that are fully vaccinated and boosted. At present 80% of Californians 12 years of age and older have completed their primary series of COVID-19 vaccines, and 48% have received their first booster dose. Vaccines for children 5-11 years of age have been available since October 2021. Vaccine coverage is also high among workers in high-risk settings, and the proportion of unvaccinated workers is low. As we've also seen, the Omicron subvariants have shown immune escape and increased transmissibility, and while unvaccinated individuals still have higher risk of infection, previously infected, vaccinated, and boosted persons have also been infected. Consequently, mandated testing of the small number of unvaccinated workers is not effectively preventing disease transmission as with the original COVID-19 virus and prior variants earlier in the pandemic.

On August 11<sup>th</sup> and August 24<sup>th</sup> the Centers for Disease Control (CDC), in updated guidance, also indicated that screening testing is no longer recommended in general community settings.

COVID-19 vaccination and boosters continue to remain the most important strategy to prevent serious illness and death from COVID-19.

Consequently, while COVID-19 remains with us, I am rescinding the July 26, 2021 State Public Health Officer Order effective September 17, 2022.

**Exhibit 59 Page 4**

**State Public Health Officer Order of July 26, 2021**

ID #:2079

The COVID-19 pandemic remains a significant challenge in California. COVID-19 vaccines are effective in reducing infection and serious disease. At present, 62% of Californians 12 years of age and older are fully vaccinated with an additional 9% partially vaccinated. California is currently experiencing the fastest increase in COVID-19 cases during the entire pandemic with 11.2 new cases per 100,000 people per day, with case rates increasing fivefold within two months. The Delta variant, which is very highly contagious and possibly more virulent, is currently the most common variant causing new infections in California.

Unvaccinated persons are more likely to get infected and spread the virus, which is transmitted through the air. Most current hospitalizations and deaths are among unvaccinated persons. Thanks to vaccinations and to measures taken since March 2020, California's health care system is currently able to address the increase in cases and hospitalizations. However, additional statewide facility-directed measures are necessary to protect particularly vulnerable populations, and ensure a sufficient, consistent supply of workers in high-risk health care and congregate settings.

Hospitals, skilled nursing facilities (SNFs), and the other health care facility types identified in this order are particularly high-risk settings where COVID-19 outbreaks can have severe consequences for vulnerable populations including hospitalization, severe illness, and death. Further, the congregate and residential settings in this order share several features. They all are residential facilities where the residents have little ability to control the persons with whom they interact. There is frequent exposure to staff and other residents. In many of these settings, the residents are at high risk of severe COVID-19 disease due to underlying health conditions, advanced age, or both.

Vaccinations have been available in California from December 2020 to the present, and from January 1, 2021, to July 12, 2021, a total of 9,056 confirmed COVID-19 outbreaks and 110,734 outbreak-related cases were reported to CDPH. The two most common settings for these outbreaks were: Residential care facilities (22.7%) and SNFs (9.7%). There have been over 4,000 outbreaks in residential care facilities, over 2,000 outbreaks in SNFs, over 450 outbreaks in hospitals, over 200 outbreaks in correctional facilities, and over 450 outbreaks reported in shelters in California to date. We also noted increasing numbers of health care workers as new positive cases, despite vaccinations being prioritized for this group when vaccines initially became available. Recent outbreaks in health care, SNFs, and other congregate settings have frequently been traced to unvaccinated staff members.

Thus, current requirements of staff in health care settings, such as universal mask requirements for all staff, are not proving sufficient to prevent transmission of the Delta variant, which is more transmissible and may cause more severe illness. Vaccination against COVID-19 is the most effective means of preventing infection with the COVID-19 virus, and subsequent transmission and outbreaks. As we respond to the dramatic increase in cases, transmission prevention measures must be increased for the significant proportion of unvaccinated health and congregate care workers remaining to reduce the chance of transmission to vulnerable populations. Reinforcement of well-fitting facemasks for source control, emphasis on increased respiratory protection with respirators in some settings, and regular testing (when appropriately followed by isolation of individuals who test positive), should contribute to reduction of transmission risk in these high-risk settings to mitigate the absence of vaccination protection.

For these reasons, COVID-19 remains a concern to public health and, in order to prevent its further spread in hospitals, SNFs, high-risk congregate settings and other health care settings, limited and temporary public health requirements are necessary at this time.

**I, as State Public Health Officer of the State of California, order:**

- I. This Order applies to the following facilities:

**Exhibit 59 Page 5**

**A. Acute Health Care and Long-term Care Settings:**

1. General Acute Care Hospitals
2. Skilled Nursing Facilities (including Subacute Facilities)
3. Intermediate Care Facilities

**B. High-Risk Congregate Settings:**

4. Adult and Senior Care Facilities
5. Homeless Shelters
6. State and Local Correctional Facilities and Detention Centers

**C. Other Health Care Settings:**

7. Acute Psychiatric Hospitals
8. Adult Day Health Care Centers
9. Adult Day Programs Licensed by the California Department of Social Services
10. Program of All-Inclusive Care for the Elderly (PACE) and PACE Centers
11. Ambulatory Surgery Centers
12. Chemical Dependency Recovery Hospitals
13. Clinics & Doctor Offices (including behavioral health, surgical)
14. Congregate Living Health Facilities
15. Dental Offices
16. Dialysis Centers
17. Hospice Facilities
18. Pediatric Day Health and Respite Care Facilities
19. Residential Substance Use Treatment and Mental Health Treatment Facilities

II. All facilities identified in this Order must verify vaccine status of all workers.

- A. Pursuant to the CDPH Guidance for Vaccine Records Guidelines & Standards, only the following modes may be used as proof of vaccination:

**Exhibit 59 Page 6**

Order of the State Public Health Officer Unvaccinated Workers In High Risk Settings  
ID #:2081

1. COVID-19 Vaccination Record Card (issued by the Department of Health and Human Services Centers for Disease Control & Prevention or WHO Yellow Card) which includes name of person vaccinated, type of vaccine provided and date last dose administered); OR
2. a photo of a Vaccination Record Card as a separate document; OR
3. a photo of the client's Vaccination Record Card stored on a phone or electronic device; OR
4. documentation of COVID-19 vaccination from a health care provider; OR
5. digital record that includes a QR code that when scanned by a SMART Health Card reader displays to the reader client name, date of birth, vaccine dates and vaccine type [i]; OR
6. documentation of vaccination from other contracted employers who follow these vaccination records guidelines and standards.

In the absence of knowledge to the contrary, a facility may accept the documentation presented as valid.

B. Facilities must have a plan in place for tracking verified worker vaccination status.

Records of vaccination verification must be made available, upon request, to the local health jurisdiction for purposes of case investigation.

C. Workers who are not fully vaccinated, or for whom vaccine status is unknown or documentation is not provided, must be considered unvaccinated.

III. Respirator or mask requirements:

Exhibit 59 Page 7

A. All facilities identified in this Order must strictly adhere to current CDPH Masking Guidance. To the extent they are already applicable, facilities must also continue to adhere to Cal/OSHA's standards for Aerosol Transmissible Diseases (ATD), which requires respirator use in areas where suspected and confirmed COVID-19 cases may be present, and the Emergency Temporary Standards (ETS) that requires all unvaccinated workers be provided a respirator upon request.

B. Acute Health Care and Long-Term Care Settings:

In addition to respirators required under Title 8 of the California Code of Regulations, facilities must provide respirators to all unvaccinated or incompletely vaccinated workers who work in indoor work settings where (1) care is provided to patients or residents, or (2) to which patients or residents have access for any purpose. Workers are strongly encouraged to wear respirators in all such settings. The facility must provide the respirators at no cost, and workers must be instructed how to properly wear the respirator and how to perform a seal check according to the manufacturer's instructions.

C. High-Risk Congregate Settings and Other Health Care Settings:

Where Title 8 of the California Code of Regulations does not require the use of respirators, facilities shall provide all unvaccinated or incompletely vaccinated workers with FDA-cleared surgical masks. Workers are required to wear FDA-cleared surgical masks in indoor settings anywhere they are working with another person.

IV. Testing requirements:

A. Acute Health Care and Long-Term Care Settings:

1. Asymptomatic **unvaccinated** or incompletely vaccinated workers are **required to undergo** diagnostic screening testing.
2. Workers may choose either antigen or molecular tests to satisfy this requirement, but unvaccinated or incompletely vaccinated workers must be tested **at least twice weekly** with either PCR testing or antigen testing. Any PCR (molecular) or antigen test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.

B. High-Risk Congregate Settings and Other Health Care Settings:

1. Asymptomatic **unvaccinated** or incompletely vaccinated workers are **required to undergo** diagnostic screening testing.
2. Workers may choose either antigen or molecular tests to satisfy this requirement, but unvaccinated or incompletely vaccinated workers must be tested **at least once weekly** with either PCR testing or antigen testing. More frequent testing improves outbreak prevention and control and is encouraged, especially with antigen testing. Any PCR (molecular) or antigen test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.

C. All Facilities:

1. Unvaccinated or incompletely vaccinated workers must also observe all other infection control requirements, including masking, and are not exempted from the testing requirement even if they have a medical contraindication to vaccination, since they are still potentially able to spread the illness. Previous history of COVID-19 from which the individual recovered more than 90 days earlier, or a previous positive antibody test for COVID-19, **do not** waive this requirement for testing.
2. Diagnostic screening testing of asymptomatic fully vaccinated workers is not currently required. However, fully vaccinated workers may consider continuing routine diagnostic screening testing if they have underlying immunocompromising conditions (e.g., organ transplantation, cancer treatment), which might impact the level of protection provided by COVID-19 vaccine.
3. Facilities with workers required to undergo workplace diagnostic screening testing should have a plan in place for tracking test results, conducting workplace contact tracing, and must report results to local public health departments. There are IT platforms available that can facilitate these processes for facilities.

V. Definitions: For purposes of this Order, the following definitions apply:

- A. "Fully Vaccinated" means individuals who are considered fully vaccinated for COVID-19: two weeks or more after they have received the second dose in a 2-dose series (Pfizer-BioNTech or Moderna or vaccine authorized by the World Health Organization), or two weeks or more after they have received a single-dose vaccine (Johnson and Johnson [J&J]/Janssen). COVID-19 vaccines that are currently authorized for emergency use:
  1. By the US Food and Drug Administration, are listed at <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>.
  2. By the World Health Organization, are listed at <https://extranet.who.int/pqweb/vaccines/covid-19-vaccines>

- B. "Incompletely vaccinated" means persons who have received at least one dose of COVID-19 vaccine but do not meet the definition of **fully vaccinated**.
- C. "Respirator" means a respiratory protection device approved by the National Institute for Occupational Safety and Health (NIOSH) to protect the wearer from particulate matter, such as an N95 filtering facepiece respirator.
- D. "Unvaccinated" means persons who have not received any doses of COVID-19 vaccine or whose status is unknown.
- E. "WHO Yellow Card" refers to the original World Health Organization International Certificate of Vaccination or Prophylaxis issued to the individual following administration of the COVID-19 vaccine in a foreign country.
- F. "Worker" refers to all paid and unpaid persons serving in health care, other health care or congregate settings who have the potential for direct or indirect exposure to patients/clients/residents or SARS-CoV-2 airborne aerosols. Workers include, but are not limited to, nurses, nursing assistants, physicians, technicians, therapists, phlebotomists, pharmacists, students and trainees, contractual staff not employed by the health care facility, and persons not directly involved in patient care, but who could be exposed to infectious agents that can be transmitted in the health care setting (e.g., clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, and volunteer personnel).

VI. The Terms of this Order supersede any conflicting terms in any other CDPH orders, directives, or guidance.

VII. Except to the extent this Order provides otherwise, all other terms in my Order of June 11, 2021 remain in effect and shall continue to apply statewide.

VIII. This Order shall take effect on August 9, 2021, at 12:01 am. Facilities must be in full compliance with the Order by August 23, 2021.

IX. This Order is issued pursuant to Health and Safety Code sections 120125, 120140, 120175, 120195 and 131080 and other applicable law.



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Director & State Public Health Officer

California Department of Public Health

Exhibit 59 Page 10

ID #:2085

[i] A technical correction was made to this paragraph on August 9, 2021, to clarify that valid SMART Health Cards issued by other states or health care providers are sufficient as proof of vaccination.

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Exhibit 59 Page 11